DEFENSE NUCLEAR FACILITIES SAFETY BOARD

625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004
(202) 208-6400

December 29, 1994

The Honorable Hazel R. O'Leary
Secretary of Energy
Washington, D.C. 20585

Dear Secretary O'Leary:

On December 29, 1994, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. § 2286a(5), unanimously approved Recommendation 94-5 which is enclosed for your consideration. Recommendation 94-5 deals with Integration of DOE Safety Rules, Orders, and Other Requirements.

42 U.S.C. § 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. §§ 2161-68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway
Chairman

Enclosure

c: Mark B. Whitaker, EH-6

RECOMMENDATION 94-5 TO THE SECRETARY OF ENERGY
pursuant to 42 U.S.C. § 2286a(5)
Atomic Energy Act of 1954, as amended.

Dated: December 29, 1994

The Board has been following with considerable interest the structure of DOE's nuclear health and safety requirements as the transition is being made from the use of Orders to rulemaking. The Board recognizes that the change has been prompted by provisions of the Price/Anderson Act Amendments of 1988, the need for uniform, enforceable requirements, and by a desire of the Department to provide greater opportunities for public input into the process for establishment of requirements. Thus the Board understands the reasons for development and promulgation of nuclear safety requirements through rulemaking. However, the Board has expressed reservations in the past and remains concerned today lest the process of conversion of Orders to rules is used as occasion to:

(1) Unduly relax or eliminate important nuclear safety requirements in Orders.

(2) Relegate good nuclear safety practices extant in existing Orders to optional status.

(3) Forego or delay current efforts to bring safety practices into compliance with mutually agreed implementation plans that respond to recommendations of the Board.

In accepting Recommendation 91-1, your predecessor advised that rulemaking would be a time-consuming process, and he committed to expedited issuance and implementation of updated requirements in DOE Orders while rules are developed. More recently, in your response of October 21, 1994 to the Board's May 6, 1994 inquiry to the Department, you also acknowledged the need for interim development, revision, and compliance with requirements in DOE Orders while rules are being promulgated.

In fact, your response reflected more completely the process that has been developed in discussions with the Board and its staff. It stated that:

(1) The Department is committed to a requirements-based safety management program.

(2) Environment, safety and health requirements are identified in rules and Orders.

(3) Orders are the prevailing means by which the Department identifies management objectives that are requirements for its personnel, and when incorporated into contracts, requirements for DOE contractors.

(4) Nuclear safety Orders are being phased into rules. Rules are the documents by which the DOE establishes binding requirements of general applicability and are adopted pursuant to the Administrative Procedures Act.

(5) Contractors are expected to comply with a rule or Order when it becomes effective[1].

(6) Standards/Requirements Identification Documents (S/RIDs) are developed as compilations of site and facility-specific requirements contained in applicable legislation, rules, Orders, technical standards and other directives necessary to operate facilities or conduct DOE activities with adequate protection of workers and the general public.

This summary clearly shows that DOE intends that the definition of what constitutes adequacy in the way of protection of workers and the public extends beyond the requirements of rules. In that, the Board definitely concurs. It is the compilation of requirements as envisaged for RIDs that represents the more comprehensive base upon which sites and facilities are to be managed from the environment, health and safety viewpoint. This has also been the thrust of many of the Board recommendations dealing with Order compliance.

However, the action toward development of S/RIDs has been slow. Requirements in Orders have been and are still the prevailing DOE means for defining safety requirements for contractors. Requirements in Orders are made enforceable by incorporating Orders into contracts. Therefore, the Board has reviewed a number of existing M & O contracts relative to provisions for Order compliance. The Board has also examined the health and safety management specifications included in several recently proposed contract actions (for example, at Rocky Flats and Hanford/Solid Waste Management). Performance per conditions specified either in existing contracts or those more recently examined will not in our view assure delivery of the safety management programs we believe that the Board and the Department expect.

Though the Board has been reassured by your letter of October 21 and by other means that requirements in DOE Orders are to remain operative until replaced by rules, there appears to be contrary guidance being issued to the field. For example, a May 27, 1994 memorandum from the Assistant Secretary for Defense Programs provides guidance that in effect encourages a premature shift in resources from Order compliance to rule compliance. For rules that will have progressed far enough in the promulgation process that only a few months are left for a show of compliance, such action may be appropriate as regards establishing priorities in assigning resources. However, such action should not be construed as countenancing relaxation of necessary requirements of the existing Order. Moreover, for proposed rules not nearly so far along in the rule-making process, impending developments should not be taken as cause for a slow-down on compliance efforts or the upgrading of applicable requirements now in Orders and contracts.

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[1] Note: Rules actually require an implementation plan and then allow a period for achieving compliance. A similar phase-in period is permissible for requirements in Orders incorporated into contracts.

Along similar lines, the Board has noted a November 30, 1994 advisory from the Albuquerque field office to DOE headquarters (M.S. Dienes to J. Fitzgerald) that a hold has been placed on the radiation protection functional appraisal process until DOE review and approval of the implementation plans for the rule have been completed. There is no rational justification for such deferral. Such action suggests that field personnel may have been led to believe that there will be marked differences between those radiation protection programs under the rule and the requirements under existing Orders incorporated in contracts.

The provisions of the contracts and the above-mentioned advisories by DOE line management indicate that the integrated use of nuclear safety-related Rules, Orders, standards and guides in defining and executing DOE's safety management program may not be sufficiently well understood by either the M & O contractors or DOE managers. This issue was raised in the Board's letter of May 6, 1994 to the Department.

Given the situation as described above, the Board believes that further DOE actions are needed to ensure there is no relaxation of commitments made to achieve compliance with requirements in Orders while proposed rules are undergoing the development process. These actions should also provide for smooth transition of Orders to rules once promulgated. Toward that end, the Board recommends that DOE:

(1) Widely disseminate the information provided to the Board in response to our May 6, 1994 letter on DOE's Safety Management Program, and take steps to ensure that key technical and contracts personnel are well schooled in this topic.

(2) Promptly issue appropriate directives and procedures to DOE Headquarters, Field Offices and O&M contractors which:

   (a) embrace the basic principle that work already commenced or planned to develop and implement requirements in existing or revised Orders or S/RIDS should continue while rulemaking is underway;

   (b) explain in detail the relationship between safety requirements contained in Orders in O&M contracts and those contained in new rules, and the process by which a rule may "supersede" parts, or the entirety, of a safety Order;

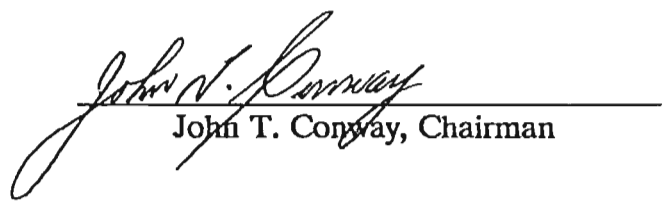
   (c) explain that compliance with a requirement whether in a rule, Order or other directive is not accomplished by submittal of an adequate implementation plan but requires completion of action proposed by that plan;

   (d) provide guidance to contractors and DOE program offices on how to coordinate implementation plans for multiple requirements such as those in Orders, rules, S/RIDs and other binding directives; and,

(e) in the process of eliminating duplicate requirements and in arranging the remaining ones along more user friendly guidelines, which the Board agrees is desirable, ensure that existing requirements that are necessary and appropriate are not relaxed nor eliminated, and schedule commitments for achieving compliance are not delayed.

(3) Ensure that compliance with the minimal (base-line) set of safety requirements contained in Rules is not construed as full compliance with all necessary safety requirements and does not displace effort to develop and implement through RIDs the best nuclear safety requirements and practices embodied in rules, Orders, standards, and other safety directives.

(4) Clearly establish such line, oversight, and legal responsibilities for review and approval of contractual provisions specifying environment, health and safety requirements for DOE contractors to ensure that the requirements-based safety management program expected by the DOE will be uniformly developed and consistently imposed across the complex.



John T. Conway, Chairman

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 94–5]

Integration of DOE Safety Rules, Orders, and Other Requirements

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning Integration of DOE Safety Rules, Orders, and Other Requirements. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before February 6, 1995.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole C. Morgan, at the address above or telephone (202) 208–6400.

Dated: January 2, 1995.

John T. Conway,

Chairman.

[Recommendation 94–5]

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Defense Nuclear Facilities Safety Board

December 29, 1994.

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Secretary of Energy, Washington, DC 20585.

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Sincerely,

John T. Conway,

Chairman.

[FR Doc. 95-363 Filed 1-5-95; 8:45 am]

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